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3:12-cv-805-MES
1/2 ECF

I. (a) PLAINTIFFS HIGH TEK USA, INC.		DEFENDANTS HEAT AND CONTROL, INC.	
(b) County of Residence of First Listed Plaintiff Sacramento <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant Alameda <i>(IN U.S. PLAINTIFF CASES ONLY)</i>	
(c) Attorneys (Firm Name, Address, and Telephone Number) Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)	
II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i>		III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff, and One Box for Defendant)</i>	
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>		<input type="checkbox"/> PTF <input type="checkbox"/> DEF Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	
		<input type="checkbox"/> PTF <input type="checkbox"/> DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 6 Foreign Nation	
IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>			
CONTRACT	TORTS		
	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice		
	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other		
	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157		
	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		
	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		
	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		
	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609		
	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions		
	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 450 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes		
REAL PROPERTY	CIVIL RIGHTS		
	PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
	PRISONER PETITIONS		
	PRIVACY <input type="checkbox"/> 700 Privacy Act		
	CONTRACT <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		
	EQUITY <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education		
	TRUSTS <input type="checkbox"/> 550 Trust Litigation		
	SECURITIES <input type="checkbox"/> 800 Securities		
	ERISA <input type="checkbox"/> 810 ERISA (29 USCS)		
	ATTORNEY FEES <input type="checkbox"/> 850 Attorney Fees		
V. ORIGIN <i>(Place an "X" in One Box Only)</i>			
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multi district Litigation			
Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity)</i> : 15 USC §1, 15 USC § 2, 15 USC § 13 and pendent state law claims			
Brief description of cause: Monopoly/Antitrust in excess of			
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION DEMAND \$ 75,000.00 <small>UNDER F.R.C.P. 23</small>	
		CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
VIII. RELATED CASE(S) <i>(If Any)</i>		<i>(See instructions):</i> JUDGE	
IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) <i>(Place an "X" in One Box Only)</i>		<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE <input type="checkbox"/> EUREKA	
DATE 2/17/12		SIGNATURE OF ATTORNEY OF RECORD	
JS 44 CAND (Rev. 12/11)		Shaye Harrington	

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 HIGH TEK USA, INC.

FEB 21 2012
HIGH TEK USA, INC.
CASE NO. C12-00805
HIGH TEK USA, INC.
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

7
 8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 HIGH TEK USA, INC., a California
 corporation,

11 Case No. **C12-00805**

MEJ

12 Plaintiff,
 13 v.
 14 HEAT AND CONTROL, INC., a
 California corporation, and DOES 1-10,
 inclusive,
 15 Defendants.

16
 17
 18 Plaintiff HIGH TEK USA, INC. ("HIGH TEK"), by and through its attorneys and for its
 19 Complaint against Defendant HEAT AND CONTROL, INC. ("H&C"), alleges as follows:

20 I. THE PARTIES

21 1. HIGH TEK is a Louisiana corporation duly authorized to conduct business in the
 22 State of California. HIGH TEK's principal place of business is in Kenner, Louisiana.

23 2. HIGH TEK is informed and believes and on that basis alleges that H&C is a
 24 California corporation duly authorized to conduct business in the State of California with its
 25 principal place of business in Hayward, California.

26 3. HIGH TEK is ignorant of the true names and capacities of defendants sued herein
 27 as DOES 1-10, inclusive, and therefore sues these defendants by fictitious names. HIGH TEK
 will amend this Complaint to add their true names and capacities when ascertained. HIGH TEK

DOWNEY BRAND LLP

1 is informed and believes, and on that basis alleges, that each of these fictitiously named
2 defendants is responsible in some manner for the acts or omissions alleged in this Complaint and
3 that HIGH TEK's injuries were proximately caused by the acts or omissions of these defendants.

4 4. HIGH TEK is informed and believes and thereon alleges that, at all times herein
5 mentioned, each of the defendants was the agent and/or employee of each of the remaining
6 defendants and, in doing the things hereinafter alleged, was acting in the course and scope of such
7 agency and/or employment.

II. JURISDICTION

9 5. Subject matter jurisdiction in this Court is proper under 28 U.S.C. § 1331 (original
10 jurisdiction over federal questions) and 28 U.S.C. § 1337 (original jurisdiction over laws
11 regulating commerce or protecting trade and commerce against restraints and monopolies).
12 Supplemental jurisdiction over the state law claims is proper in this Court under 28 U.S.C. §
13 1367. Subject matter jurisdiction in this Court is also proper under 28 U.S.C. § 1332. HIGH
14 TEK is a corporation organized and existing under the laws of the State of Louisiana, duly
15 authorized to conduct business in the State of California. HIGH TEK's principal place of
16 business is in Kenner, Louisiana. HIGH TEK is informed and believes and on that basis alleges
17 that H&C is a corporation organized and existing under the laws of the State of California with its
18 principal place of business in Hayward, California. The amount in controversy exceeds the sum
19 or value of \$75,000.

20 6. Personal jurisdiction is this Court is proper because H&C is domiciled in the State
21 of California and/or has sufficient minimum contacts with the State of California to confer
22 jurisdiction upon this Court such that the maintenance of this suit does not offend traditional
23 notions of fair play and substantial justice.

III. VENUE

25 7. Venue in this Court is proper under 28 U.S.C. § 1391 in that H&C is a corporation
26 organized and existing under the laws of the State of California with its principal place of
27 business in Hayward, California.

1 **IV. FACTUAL BACKGROUND**

2 8. H&C manufactures food processing and packaging equipment systems. It is the
3 exclusive North America distributor of scales, equipment and parts manufactured by Ishida Co.,
4 Ltd. ("Ishida"). H&C distributes Ishida parts in California and throughout the United States in
5 interstate commerce.

6 9. In 2004, O'Jayland Brown ("Mr. Brown") and Jason Sigman ("Mr. Sigman")
7 started their own service-based company, which is now known as HIGH TEK. Initially, HIGH
8 TEK serviced food processing and packaging equipment systems — including those
9 manufactured by Ishida — that had been purchased from other companies such as H&C.

10 10. Over the years, HIGH TEK's service business flourished. Word of mouth
11 regarding HIGH TEK's superior services spread throughout the packaging industry on the west
12 coast and began steadily spreading eastward, allowing HIGH TEK to provide services in various
13 states throughout the country. It soon became apparent that the food processing and packaging
14 industry lacked a key item: quality refurbished/reconditioned equipment at a great price with
15 excellent support. Mr. Brown and Mr. Sigman recognized this need and, as a result, HIGH TEK
16 added to its business model.

17 11. With the addition, HIGH TEK not only provides valuable services to its
18 customers, it also sells used scales that it refurbishes and reconditions to factory standards. Sales
19 are made throughout the country in interstate commerce. HIGH TEK continues to service the
20 scales for existing and new customers. With this new addition to HIGH TEK's business, HIGH
21 TEK believes H&C began to view HIGH TEK as competition for its sales business and, on
22 information and belief, hoped to eliminate that competition.

23 12. In refurbishing/reconditioning and servicing scales, HIGH TEK deals exclusively
24 with Ishida scales. In order to refurbish and recondition the scales and service them during
25 continued use by HIGH TEK's customers, HIGH TEK must purchase Ishida parts from the
26 exclusive North America distributor: H&C.

27 13. Initially, for reasons that are only known to H&C but appear to be tied to a desire
28 to eliminate competition, H&C refused to provide HIGH TEK with a parts account and thereby

1 prohibited HIGH TEK from purchasing Ishida parts in North America. As a result, HIGH TEK
2 was forced to purchase parts from H&C through a different company, Conseco Food Group Inc.
3 When H&C learned that HIGH TEK was purchasing parts through Conseco Food Group Inc., it
4 insisted that such third-party transaction cease.

5 14. Then, in or about 2007, Jim Tate (“Mr. Tate”), an H&C Service Manager and
6 Mr. Brown and Mr. Sigman’s old supervisor, told HIGH TEK that H&C would give the
7 Company a parts account if HIGH TEK made changes to its catalog. Mr. Tate was an agent of
8 H&C. Specifically, although the catalog never referenced H&C, it described HIGH TEK as being
9 the best in the industry. Mr. Tate asserted that, in order for HIGH TEK to obtain a long-term
10 parts account, H&C insisted that language be removed. In February 2007, in what proved to be
11 detrimental reliance upon H&C’s promise of a long-term parts account, HIGH TEK made the
12 requested changes to its catalog. HIGH TEK sent a copy of these changes to Mr. Tate in order to
13 initiate the process of obtaining a long-term parts account.

14 15. Thereafter, H&C temporarily provided HIGH TEK with a parts account to
15 purchase Ishida parts. At first, H&C set up the account as collect on delivery (“COD”). Over
16 time, HIGH TEK obtained a line of credit for the parts. Even with the line of credit, though,
17 H&C required HIGH TEK to pay a 10-20% markup on all Ishida parts — something other
18 companies who were not in direct competition with H&C were not required to pay. Although
19 upset by the increased price, HIGH TEK had no other options when it came to purchasing Ishida
20 parts and, therefore, regularly paid the inflated invoices issued by H&C.

21 16. During the course of the next few years, HIGH TEK’s success soared and the
22 Company soon became a major competitor of H&C. Almost immediately after H&C and HIGH
23 TEK held tables near one another at the PMMI Pack Expo food processing and packaging trade
24 show in Las Vegas, Nevada, and after all outstanding invoices were paid by HIGH TEK
25 (including those not yet due), H&C changed HIGH TEK’s parts account back to COD.
26 Approximately three days later, on December 20, 2011, H&C eliminated HIGH TEK’s parts
27 account entirely without explanation. According to H&C’s Chief Financial Officer, George Lotti,
28 H&C would “no longer be accepting any future orders from [HIGH TEK].”

1 17. Because H&C is the exclusive North America distributor of Ishida scale
2 equipment, including all parts, H&C's actions meant that HIGH TEK could no longer purchase
3 Ishida parts in North America. HIGH TEK has attempted to purchase parts from Ishida
4 distributors outside of North America, e.g., in Europe. Initially, the European distributor
5 provided HIGH TEK with an application to purchase parts. However, after the European
6 distributor spoke with H&C, it informed HIGH TEK that it could not sell parts to the Company
7 because H&C is the only company that can sell Ishida parts in the United States. Specifically, the
8 European distributor stated that it could not supply parts to HIGH TEK “[w]ith the current
9 agreements in place with [H&C]” and that HIGH TEK would need to contact H&C for all parts
10 needs in North America. When HIGH TEK followed up and explained that H&C refused to sell
11 Ishida parts to the Company, the European distributor stated: “H&C is the exclusive distributor
12 for North America, and therefore all parts (and machine) purchases must go through [H&C].”

13 18. HIGH TEK then contacted Ishida to try to purchase parts directly from the
14 manufacturer, but was again told that parts could only be purchased in North America from H&C.

15 19. HIGH TEK has attempted to purchase Ishida parts through third-party companies
16 who initially purchased parts from H&C. However, H&C has halted any such transactions and,
17 upon information and belief, has threatened and/or coerced the third-party companies such that
18 they fear losing their parts accounts with H&C if they resell parts to HIGH TEK.

19 20. HIGH TEK's inability to purchase Ishida parts has halted the Company's ability to
20 conduct business. HIGH TEK currently has contracts with its customers that require it to obtain
21 Ishida parts. Those contracts must be fulfilled. H&C's actions prohibit HIGH TEK from
22 fulfilling its obligations under those contracts because there is no other alternative to purchase
23 Ishida parts. HIGH TEK has been forced to breach its contracts and turn away business as a
24 result of H&C's refusal to sell Ishida parts.

25 21. HIGH TEK has attempted to meet and confer with H&C regarding H&C's sudden,
26 complete and unjustified refusal to sell Ishida parts to HIGH TEK. H&C responded by stating it
27 “has determined to whom it will sell product, and on what terms.” Although it stated that it
28 “decided not to deal with [HIGH TEK] for valid and legitimate business reasons,” H&C failed

1 and refused to identify those alleged reasons. H&C concluded its response by stating the
2 following:

3 H&C will not reinstate [HIGH TEK's] parts account. H&C is fully
4 within its legal rights in choosing not to deal with [HIGH TEK],
5 and [HIGH TEK's] meritless legal threats will not cause H&C to
change its decision. If [HIGH TEK] nevertheless decides to file
suit, H&C will meet that action with a vigorous defense and all
other available legal responses, including possible counterclaims.

7 22. The actions of H&C as alleged above were done with malice, fraud and oppression
8 and in reckless disregard of the rights of HIGH TEK, entitling HIGH TEK to an award of
9 punitive damages.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1)

3 23. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through
4 22, inclusive, of this Complaint and by reference thereto incorporates¹ the same herein as though
5 set forth in full.

16 24. H&C has contracts with Ishida to be the exclusive distributor of Ishida parts in
17 North America. H&C also has contracts with companies to which it sells Ishida parts.

18 25. H&C's contracts with Ishida and the way it executes those contracts in North
19 America unreasonably restrains trade under both a per se rule of illegality and a rule of reason
20 analysis. Likewise, H&C's threats to/coercion of and refusal to sell Ishida parts to companies that
21 agree to resell them to HIGH TEK unreasonably restrains trade.

22 26. The restraint on trade has affected interstate commerce and competition as a
23 whole. H&C and HIGH TEK both have contracts with customers throughout the United States.
24 H&C's conduct has eliminated competition in those locations and prohibited HIGH TEK from
25 performing its contracts in those locations.

26 27. As a result of H&C's conduct, HIGH TEK has been and continues to be harmed in
27 an amount to be determined at trial, but in no event less than \$75,000.

28 WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

SECOND CLAIM FOR RELIEF**(Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2)**

1 28. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through
 2 4 27, inclusive, of this Complaint and by reference thereto incorporates the same herein as though
 3 5 set forth in full.

6 29. There is a relevant market for the purchase of Ishida parts in California and
 7 7 throughout North America.

8 30. H&C possesses monopoly power in the relevant market for the purchase of Ishida
 9 9 parts in California and throughout North America. That market is characterized by significant
 10 10 entry barriers.

11 31. H&C has willfully and wrongfully maintained and abused its monopoly power in
 12 12 the relevant market for the purchase of Ishida parts through anticompetitive and exclusionary
 13 13 behavior directed at HIGH TEK, including anticompetitive behavior designed to prevent HIGH
 14 14 TEK from engaging in its business and serving as an alternative platform that threatened and
 15 15 continues to threaten H&C's monopoly power in the Ishida parts market.

16 32. The foregoing acts and practices have harmed consumers and competition.

17 33. H&C's anticompetitive and exclusionary conduct has directly and proximately
 18 18 caused injury to HIGH TEK's business and contracts with its customers, as set forth above.
 19 19 HIGH TEK's injury is of the type the antitrust laws are intended to prohibit and thus constitutes
 20 20 antitrust injury. Unless the activities complained of are enjoined, HIGH TEK also will continue
 21 21 to suffer injury for which HIGH TEK is without an adequate remedy at law.

22 WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

THIRD CLAIM FOR RELIEF**(Violation of the Robinson-Patman Act, 15 U.S.C. § 13.)**

25 34. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through
 26 33, inclusive, of this Complaint and by reference thereto incorporates the same herein as though
 27 27 set forth in full.

1 35. H&C engaged in contemporaneous sales of commodities, namely Ishida scales,
2 equipment and parts, to various customers. The grade and quality of these parts were the same
3 for all customers.

4 36. For the brief period of time that H&C sold Ishida parts to HIGH TEK, it engaged
5 in price discrimination. Specifically, H&C required HIGH TEK to pay a 10-20% markup on all
6 Ishida parts — something other customers who were not in direct competition with H&C were
7 not required to pay. Although upset by the increased price, HIGH TEK had no other options
8 when it came to purchasing Ishida parts and, therefore, regularly paid the inflated invoices issued
9 by H&C.

10 37. Both H&C and HIGH TEK engage in interstate commerce and H&C's action
11 significantly impacted business conducted in and across various states.

12 38. As a result of H&C's conduct, HIGH TEK has been and continues to be harmed in
13 an amount to be determined at trial, but in no event less than \$75,000.

14 WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

FOURTH CLAIM FOR RELIEF

(Intentional Interference with Contractual Relations)

17 39. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through
18 38, inclusive, of this Complaint and by reference thereto incorporates the same herein as though
19 set forth in full.

20 40. Prior to H&C's decision to cease sales of Ishida parts to HIGH TEK, HIGH TEK
21 entered into agreements with several customers whereby HIGH TEK would sell
22 refurbished/reconditioned scales and, in some instances, further service those scales as needed.
23 Pursuant to these contracts, HIGH TEK was required to purchase Ishida parts and could only do
24 so from H&C.

25 41. H&C knew of the existing contracts HIGH TEK had with its customers. H&C
26 further knew that HIGH TEK needed to purchase Ishida parts from H&C in order to perform
27 under these contracts.

1 42. HIGH TEK intended to disrupt and did disrupt the performance of the existing
2 contracts HIGH TEK had with its customers. After conditioning such an arrangement on HIGH
3 TEK first agreeing to remove any competitive language from its catalog, H&C initially provided
4 HIGH TEK with a parts account for Ishida parts. However, as HIGH TEK's business grew, the
5 competition apparently impacted H&C's business. As a result, H&C immediately and suddenly
6 refused to sell parts to HIGH TEK for the purpose of forcing HIGH TEK to breach its contracts
7 with its current customers. HIGH TEK has attempted to meet and confer with H&C in order to
8 obtain these parts and complete the work for its customers, and has expressed these efforts to
9 H&C, but H&C nevertheless refuses to sell Ishida parts to HIGH TEK in full awareness that its
10 decision will force HIGH TEK to breach its existing contracts.

11 43. H&C's conduct prevented performance of HIGH TEK's contracts with its
12 customers and made performance more expensive and difficult. To date, HIGH TEK has been
13 unable to perform its contracts for at least 20 customers.

14 44. HIGH TEK has been, and will continue to be, harmed by H&C's conduct in an
15 amount to be determined at trial, but in no event less than \$75,000.

16 45. HIGH TEK has been unable to perform its contracts for at least 20 customers.
17 Some contracts are expected to generate additional business in the future. HIGH TEK believes,
18 and on that basis alleges, that H&C has continued to interfere with HIGH TEK's existing
19 contracts. Therefore, the total extent of lost contracts is currently unknown.

20 46. H&C's conduct was a substantial factor in causing HIGH TEK harm.

21 WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

FIFTH CLAIM FOR RELIEF

(Intentional Interference with Prospective Economic Advantage)

24 47. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through
25 46, inclusive, of this Complaint and by reference thereto incorporates the same herein as though
26 set forth in full.

27 48. Prior to H&C's decision to cease sales of Ishida parts to HIGH TEK, HIGH TEK
28 entered into agreements with several customers whereby HIGH TEK would sell

1 refurbished/reconditioned scales and, in some instances, further service those scales as needed.
2 Pursuant to these contracts, HIGH TEK was required to purchase Ishida parts and could only do
3 so from H&C. In many cases, as is the standard in the industry, relationships between HIGH
4 TEK and its customers continued for several different pieces of equipment. As a result, these
5 contracts were reasonably certain to produce future economic benefits to HIGH TEK including,
6 but not limited to, additional contracts for subsequent years.

7 49. H&C knew of the existing relationships HIGH TEK had with its customers and
8 prospective customers. As a competitor, H&C is fully aware of the nature of HIGH TEK's
9 business and understood that business relationships often extend for several years. H&C further
10 knew that HIGH TEK needed to purchase Ishida parts from H&C in order to perform under these
11 contracts.

12 50. HIGH TEK intended to disrupt and did disrupt the performance of the existing
13 relationships HIGH TEK had with its customers and prospective customers. After conditioning
14 such an arrangement on HIGH TEK first agreeing to remove any competitive language from its
15 catalog, H&C initially provided HIGH TEK with a parts account for Ishida parts. However, as
16 HIGH TEK's business grew, so too did its potential to compete with H&C. As a result, H&C
17 immediately and suddenly refused to sell parts to HIGH TEK for the purpose of impacting HIGH
18 TEK's relationships with its current and prospective customers. HIGH TEK has attempted to
19 meet and confer with H&C in order to obtain these parts and complete the work for its customers,
20 and has expressed these efforts to H&C, but H&C nevertheless refuses to sell Ishida parts to
21 HIGH TEK in full awareness that its decision will impact HIGH TEK's relationships with its
22 current and prospective customers.

23 51. H&C intentionally committed wrongful acts designed to interfere with or disrupt
24 the relationship between HIGH TEK and its current and prospective customers. H&C has made
25 misrepresentations to HIGH TEK regarding long-term parts agreements in exchange for changes
26 to HIGH TEK's catalog and, upon information and belief, has made misrepresentations to other
27 companies and distributors regarding HIGH TEK. Further, H&C has engaged in a continued
28 course of anticompetitive conduct in violation of the Sherman Act, among other laws.

1 52. H&C's wrongful acts have caused and will cause disruption of the relationships
2 independently.

3 53. HIGH TEK has been, and will continue to be, harmed by H&C's conduct in an
4 amount to be determined at trial, but in no event less than \$75,000.

5 54. Already, HIGH TEK has been unable to perform its contracts for at least 20
6 current customers. Some contracts are expected to generate additional business in the future.
7 Without Ishida parts from H&C, HIGH TEK will be unable to provide refurbished/reconditioned
8 scales to current or prospective customers. HIGH TEK believes, and on that basis alleges, that
9 H&C has continued to interfere with HIGH TEK's relationships. Therefore, the total extent of
10 lost relationships is currently unknown.

11 55. H&C's conduct was a substantial factor in causing HIGH TEK harm.

12 56. The actions of H&C as alleged above were done with malice, fraud and oppression
13 and in reckless disregard of the rights of HIGH TEK, entitling HIGH TEK to an award of
14 punitive damages.

WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

SIXTH CLAIM FOR RELIEF

(Promissory Estoppel)

18 57. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through
19 56, inclusive, of this Complaint and by reference thereto incorporates the same herein as though
20 set forth in full.

21 58. Initially, for reasons that are only known to H&C but appear to be tied to increased
22 competitive pressure asserted against it by HIGH TEK, H&C refused to provide HIGH TEK with
23 a parts account and thereby prohibited HIGH TEK from purchasing Ishida parts.

24 59. Then, in or about 2007, H&C promised to give HIGH TEK a parts account if
25 HIGH TEK agreed to make changes to its catalog. Specifically, although the catalog never
26 referenced H&C, it described HIGH TEK as being the best in the industry. H&C's agent asserted
27 that, in order for HIGH TEK to obtain a parts account, H&C insisted that language be removed.

60. In making this agreement, H&C knew or should have known that HIGH TEK would be reasonably induced to rely on H&C's promise by changing its catalog.

61. In February 2007, in detrimental reliance upon H&C's promise of a long-term parts account, HIGH TEK made the requested changes to its catalog.

62. H&C initially and temporary provided HIGH TEK with a parts account but, thereafter, suddenly and completely eliminated HIGH TEK's parts account without justification.

63. As a result of H&C's conduct, HIGH TEK has been and continues to be harmed in an amount to be determined at trial, but in no event less than \$75,000.

64. Injustice can be avoided only by enforcing H&C's promise completely.

WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

SEVENTH CLAIM FOR RELIEF

(Violation of Cal. Business and Professions Code § 17200 *et seq.*)

65. HIGH TEK repeats and realleges the allegations contained in paragraphs 1 through 64, inclusive, of this Complaint and by reference thereto incorporates the same herein as though set forth in full.

66. H&C engaged in unfair competition as defined by California Business and Professions Code section 17200, *et seq.*, in that H&C used unfair, unlawful and fraudulent business practices, including but not limited to violation of the Sherman Act, interference with contracts and prospective economic advantage, and promissory estoppel, in the manner or manners described herein.

67. As a direct and proximate result of the willful actions, conduct, and practices of H&C alleged above, HIGH TEK has been damaged and will continue to be irreparably harmed.

68. The foregoing conduct constitutes transgressions of a continuing nature for which HIGH TEK has no adequate remedy at law.

WHEREFORE, HIGH TEK seeks judgment against H&C as provided below.

VI. PRAYER FOR RELIEF

Wherefore, HIGH TEK prays for the following:

1. Judgment in HIGH TEK's favor and against H&C;

2. For compensation in an amount according to proof at trial including, but not
limited to, actual damages and treble damages where appropriate;

3 3. For appropriate equitable relief, including a permanent injunction enjoining H&C
4 from causing further antitrust injury to HIGH TEK and from conducting unlawful, unfair, and
5 fraudulent business practices as alleged in this Complaint and to restore competition lost in the
6 relevant market for Ishida parts in California and throughout North America including, but not
7 limited, to restoration of HIGH TEK's Ishida parts account with H&C;

8 3. For restitution of amounts H&C has wrongfully obtained as a result of their
9 unlawful, unfair, and fraudulent business practices;

4. For exemplary and punitive damages in an amount to be determined at trial;

11 | 5. For attorneys' fees as authorized by law;

12 || 6. For costs of suit;

13 7. For such other and further relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

HIGH TEK hereby demands a jury trial. Fed. R. Civ. P. 38.

DATED: February 17, 2012

DOWNEY BRAND LLP

By:

~~SHAYE HARRINGTON~~
Attorney for Plaintiff
HIGH TEK USA, INC.